

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

ORANGE COUNTY HEAD START, INC.

Employer

and

Case 21-RD-2858

SERVICE EMPLOYEES INTERNATIONAL UNION
LOCAL 99

Union

and

NANCY VEGA, AN INDIVIDUAL

Petitioner

**REPORT ON OBJECTIONS,
ORDER DIRECTING HEARING,
AND
NOTICE OF HEARING**

This Report¹ contains my recommendations regarding the Union's objections to the second election conducted on March 4 and 5, 2010.² A Tally of Ballots issued on

¹ This report has been prepared under Section 102.69 of the Board's Rules and Regulations, Series 8, as amended.

² All full-time and regular part-time professional nurses and all full-time and regular part-time non-professional teacher assistants I, teacher assistants II, teachers, family services advocates, transportation assistants, custodians, cooks, food service assistants and community outreach advocates employed by the Employer out of its main office facility located at 2900 South Harbor Boulevard, Santa Ana, California and at its twenty-two (22) centers located at 6627 La Cienega Drive, Buena Park, California, 6725 Dale Street, Buena Park, California, 408 South Flower Avenue, Brea, California, 22150 Wardham Avenue, Hawaiian Gardens, California, 32204 Del Obispo Street, San Juan Capistrano, California, 801 South Gaymont Street, Anaheim, California, 341 South Courtney Avenue, Fullerton, California, 1600 Sapphire Road, Fullerton, California, 211 South Dale Avenue, Anaheim, California, 840 South Melrose Street, Placentia, California, 14422 Hammon Lane, Huntington Beach, California, 12741 Main Street, Garden Grove, California, 2352 Canyon Drive, Costa Mesa, California, 1002 West 2nd Street, Santa Ana, California, 17175 Emerald Lane, Huntington Beach, California, 1008 West Russell Avenue, Santa Ana, California, 505 E. Central Avenue, Santa Ana, California, 2043 Meyer Place, Costa Mesa, California, 9200 Pacific Place, Anaheim, California, 601 Ruby Drive, Placentia, California, 14900 Park Lane, Midway City, California and 31485

March 5, 2010³. The Tally of Ballots showed that there were 3 determinative challenged ballots. The Union and the Employer both filed timely Objections to the Conduct of the Election. Subsequently, the parties entered into a Stipulation in which all parties agreed the ballots of the challenged voters should be opened and counted inasmuch as the voters were eligible to vote as they had been hired prior to the voter eligibility date and employed on the day of the election.⁴

The Revised Tally of Ballots served on the parties on March 30, 2010 shows that of approximately 306 eligible voters, 145 cast ballots for the Petitioner and 147 cast ballots against representation by the participating labor organization. There were no void ballots. The Union's objections, a copy of which is attached hereto as Exhibit A, allege the following:

- 1) At a voting location an Employer supervisor entered the immediate polling area on three separate occasions during the voting period, despite being warned by the attending Board agent that the Supervisor's presence was not permitted;
- 2) During the two day voting period, the Employer held a mandatory training at its headquarters for various employees, who would have

El Camino Real, San Juan Capistrano, California; **excluding** all other employees, the administrative assistant to the executive director, the administrative assistant to the director of operations, all program assistants, confidential employees, office clerical employees, special needs aids, home educators, home educators – EHS, accountants, accounting technicians, accounting coordinators, facilities technicians, maintenance associates, facilities managers, purchasing technicians, purchasing coordinators, inventory technicians, bilingual liaisons, operations technicians, financial analysts, finance specialists, finance technicians, MIS technicians, MIS specialists, MIS coordinators, human resources technicians, human resources coordinators, human resources specialists, area service specialists, governance specialists, governance and delegate agency relations managers, health specialists, family health managers, education specialists, education coordinators, disabilities specialists, disabilities managers, mental health specialists, mental health managers, nutrition specialists, food service specialists, food service supervisors, nutrition and food service managers, program services coordinators, social service specialists, social service and family partnerships managers, quality systems technicians, quality systems coordinators, quality systems managers, support services supervisors, teacher supervisors, home base supervisors, center directors, the director of education services, director of health systems, director of human resources, director of operations, director of finance and administration, executive director, managerial employees, contract employees, agency supplied employees, interns, on-call employees, temporary employees, guards and supervisors as defined in the Act.

³ The Tally of Ballots showed 306 approximate number of eligible voters, 0 void ballots, 145 for Union, 144 for Employer, 289 total of valid votes counted and 3 challenged ballots.

⁴ After the Revised Tally of Ballots issued, the Employer requested to withdraw its Objection to the Conduct of the Election. I am hereby permitting the withdrawal of the Employer's Objection.

otherwise been at their respective work sites during the voting period. By targeting a significant number of known union activists and leaders to attend the mandatory training, the Employer interfered with laboratory conditions and otherwise coerced the employees' free choice in selecting their bargaining representatives.

For the reasons herein, I am ordering a hearing to be held regarding the Union's Objections.

Procedural History

The petition in this matter was filed on March 17, 2009; the parties entered into a Stipulated Election Agreement on May 22, 2009 for a two-day election to be conducted on June 4 and 5, 2009. The Tally of Ballots which was served on the parties at the conclusion of the election showed 136 ballots for the Union and 144 ballots cast against the Union. There were 2 challenged ballots which were insufficient to affect the outcome of the election.

The Union filed Objections to the Election, and a Hearing Officer issued a Report on September 1, 2009 and recommended a second election be held. On September 15, 2009, the Board issued a Decision, Order, and Direction of Second Election as no exceptions to the Hearing Officer's Report were filed. On September 21, 2009, the Union filed a charge against the Employer in Case 21-CA-39016; the Employer entered into a Settlement Agreement in the matter, and on December 10, 2009, the Employer initiated compliance in the matter which included the posting of a Notice to Employees. On February 12, 2010, the undersigned issued a Notice of Second Election for an election to be conducted on March 4 and 5, 2010.

As noted earlier, the Revised Tally of Ballots served on the parties on March 30, 2010 shows that of approximately 306 eligible voters, 145 cast ballots for the Petitioner and 147 cast ballots against representation by the participating labor organization. There were no void ballots.

The Objections

Objection 1

At a voting location an Employer supervisor entered the immediate polling area on three separate occasions during the voting period, despite being warned by the attending Board Agent that the supervisor's presence was not permitted.

In support of Union Objection No. 1, the Union contends that Witness A would testify that on March 4 the Center Director at Topaz entered the polling area at the Topaz work site on three separate occasions despite being warned by Board Agents that her presence in that area was prohibited.

The Employer denies the allegations above, denies that it engaged in any objectionable conduct, and asserts that, even if the allegations above were true, that would not constitute objectionable conduct.

The Petitioner did not provide evidence or a position regarding this objection.

Objection 2

During the two day voting period, the Employer held a mandatory training at its headquarters for various employees, who would have otherwise been at their respective work sites during the voting period. By targeting a significant number of known union activists and leaders to attend the mandatory training, the Employer interfered with laboratory conditions and otherwise coerced the employees' free choice in selecting their bargaining representative.

The Union argues that by removing teachers from their workplaces on the days of the election, the Employer failed to also provide adequate coverage for the classrooms such that those employees left had to choose between covering the classroom and voting. Thus, employees who were working did not have sufficient support so that they could go vote.

In support of Union Objection No. 2, the Union argues two points. In the first point, it asserts that witnesses would testify that Union representatives did not know about the training until a week before the election. Furthermore, the Union asserts that a sizeable number of those selected for the training were Union activists. An employee witness, according to the Union, would testify that he/she did not know about the training until about 2 weeks before the election. The Union asserts that if it had known about the training at the time the elections details were negotiated, it would have objected to holding the election at the same time of the training. Union witnesses would also testify their presence at the training sessions was highly monitored.

In support of the second point, employee witnesses would also testify that at the Tustin facility there is a classroom for a Head Start program as well as an Early Head Start program. One of the requirements for the programs is that each classroom has to have certain coverage. While the Center Director and a teacher attended the mandatory training, there were 5 employees who remained to maintain minimal coverage in the classrooms to work with approximately 22 young children. According to Union witnesses, at least 2 of the 5 employees at the Tustin facility were unable to vote because of work requirements.

The Employer denies the allegations above, denies that it engaged in any objectionable conduct, and asserts that some of the allegations above, if true, would not constitute objectionable conduct.

The Petitioner did not provide evidence or a position regarding this objection.

In *Sahuaro Petroleum & Asphalt Co.*, 306 NLRB 586-587 (1992), the Board stated:

“Where the conduct of a party to the election causes an employee to miss the opportunity to vote, the Board will find that to be objectionable if the employee’s vote is determinative and the employee was disenfranchised through ‘no’ fault of his own. *Versail Mfg.*, 212 NLRB 592, 593 (1974). When an employee is prevented from voting by reason of sickness or some other planned occurrence beyond the control of a party or the Board, the inability to vote is not a basis for setting aside the election. *Id.* The burden is on the objecting party...to come forward with evidence in support of its objection. *Campbell Products Dept.*, 260 NLRB 1247 (1982).”

Conclusion

In view of the conflicting positions of the parties and the substantial and material factual and legal issues raised by the above-noted objections, I conclude that Union's Objection Nos. 1 and 2 can best be resolved by a hearing. Accordingly, pursuant to Section 102.69(d) of the Board's Rules and Regulations, Series 8, as amended, I shall direct a hearing on Union's Objection Nos. 1 and 2.

ORDER

IT IS HEREBY ORDERED that a hearing be held before a duly designated Hearing Officer for the purpose of receiving evidence to resolve the issues raised by the Union’s Objection Nos. 1 and 2.

IT IS FURTHER ORDERED that the Hearing Officer designated for the purpose of conducting such hearing shall prepare and cause to be served upon the parties a report containing the resolution of the credibility of witnesses, findings of fact, and recommendations to the Board as to the Union's Objection Nos. 1 and 2. The provisions of Section 102.69 of the above Rules shall govern with respect to the filing of exceptions or an answering brief on the exceptions to the Hearing Officer's report.⁵

⁵ This direction of hearing is subject to special permission to appeal in accordance with Section 102.69(i) (1) and Section 102.64 of the Board's Rules and Regulations, Series 8, as amended.

NOTICE OF HEARING

PLEASE TAKE NOTICE that, on April 22, 2010, **and such consecutive days thereafter until concluded**, at 9:00 a.m., PDT, in Hearing Room 903, Ninth Floor, 888 South Figueroa Street, Los Angeles, California, a hearing will be conducted for the purposes set forth in the above Order, at which time and place the parties will have the opportunity to appear in person, or otherwise, and give testimony.

Dated at Los Angeles, California on April 8, 2010.

/s/James F. Small
James F. Small
Regional Director, Region 21
National Labor Relations Board